

Potential Opportunities Under Executive Order Taking “Immediate Measures to Increase American Mineral Production”

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Executive Summary

President Trump issued recently an Executive Order, “[Immediate Measures to Increase American Mineral Production](#)” (the “Order”), initiating several actions aimed at boosting domestic mining output of certain minerals by incentivizing production and reducing regulatory burdens. The Order uses authority conferred by the Defense Production Act (DPA) and further enhanced DPA authorities by declaring a National Emergency in connection with energy and critical minerals.¹ The Order also makes novel use of the powers and unique toolset of the International Development Finance Corporation (DFC), an agency aimed at promoting development financing in lower and middle-income countries. By turning this power inward, the Order provides new pathways for the exploitation of domestic minerals. In sum, the Order may present opportunities for companies in the mining industry to obtain federal assistance in the form of purchases and purchase commitments, loans and loan guarantees, and offtake contracts to support expanded domestic mining output of covered minerals—and, in some cases, international mineral production as well.

Covered Minerals

The scope of the Order encompasses those “critical minerals” identified under 30 U.S.C. §1606(a)(3), while specifically adding “uranium, copper, potash, gold, and any other element, compound or material as determined by the Chair of the National Energy Dominance Council (NEDC).” A [Fact Sheet](#) accompanying the order cites coal as an example of a mineral that may be determined by the NEDC as within the scope of the Order.

Minerals currently identified as “critical minerals” per 30 U.S.C. § 1606(a)(3) include aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc and zirconium.²

DPA Title III

The Order invokes powers granted by [DPA Title III, “Expansion of Productive Capacity and Supply.”](#) which grants the President authority to take several actions “[t]o create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense” including:

Purchases or Purchase Commitments of the Resource (per Sec. 303, 50 U.S.C. § 4533)

Purchases under this section can include:

- government purchase and installation of production equipment at either government or private sector facilities;
- government-provided engineering support to increase yield or quality at a private production facility;
- purchase of sample quantities for process validation and quality testing.

Purchase Commitments can include direct purchases or the government acting as a buyer of last resort to establish a viable market price.

Loans (per Sec. 302, 50 U.S.C. § 4532)

The President may make provision for loans to private business enterprises for:

- creation, maintenance, expansion, protection or restoration of capacity;
- development of technological processes;
- production of essential materials, including the exploration, development and mining of strategic and critical metals and minerals.

The President has broad flexibility in setting the terms and conditions of these loans, but during a period of national emergency, the President must first determine that:

- the loan is for the production or supply of a resource “essential to the national defense;”
- without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes or materials in a timely manner;
- the loan is the most cost-effective, expedient and practical alternative method for meeting the need;
- the recipient can provide a reasonable assurance of repayment;
- the Secretary of the Treasury determines the interest rate to be reasonable.

Loan Guarantees (per Sec. 301, 50 U.S.C. § 4531)

Under Section 301, “the President may authorize a guaranteeing agency to provide guarantees of loans by private institutions for the purpose of financing any contractor, subcontractor, provider of critical infrastructure, or other person in support of production capabilities or supplies that are deemed by the guaranteeing agency to be necessary to create, maintain, expedite, expand, protect or restore production and deliveries or services essential to the national defense.”

A series of preconditions are normally required under all three sections, but they may be waived during a period of national emergency. The Order at Sec. 6(d) does, in fact, waive the requirements.

DPA Delegations – The DoD and the DFC

The Order delegates the above referenced portions of the President’s DPA Title III authority to the CEO of the DFC, in consultation with the Secretary of Defense, the Secretary of the Interior, the Secretary of Energy, the Chair of the NEDC and the heads of other agencies as the CEO deems appropriate.

The Department of Defense (DoD) is directed to use Section 303 purchasing authority, in consultation with the NEDC and other agencies, to take actions “necessary or appropriate to

advance domestic mineral production.” The DoD is further directed to, within 30 days, “add mineral production as a priority industrial capability development area for the Industrial Base Analysis and Sustainment Program.” The IBAS program, created pursuant to 10 U.S.C. 4817, manages a fund used in part for addressing supply chain vulnerabilities.

While the DoD has been the traditional avenue for administration and disbursement of DPA funds, the addition of the DFC furthers the continuing evolution of that agency, which originated as the Nixon-era Overseas Private Investment Corporation (OPIC) and grew to take a more serious role in strategic overseas U.S. investment, as solidified by its increased powers under the Better Utilization of Investments Leading to Development (BUILD) Act during the first Trump Administration—which also renamed the agency.

The order permits the DFC, in consultation with other agencies and the NEDC, to use DPA Title III powers “for the domestic production and facilitation of strategic resources the CEO deems necessary or appropriate to advance mineral production” but limits the delegated loan authority “to loans that create, maintain, protect, expand or restore domestic mineral production.”

The order directs the DoD and DFC to collaborate on the creation of “a dedicated mineral and mineral production fund for domestic investments executed by the DFC,” tasking them with proposing a plan within 30 days of the Order’s date.

Export-Import Bank Offtake Capacity

In January, the Export-Import Bank of the United States (EXIM) launched a Supply Chain Resiliency Initiative (SCRI) to provide “targeted financing to develop projects that secure critical minerals and rare earth elements, essential for transformative technologies like battery storage and semiconductors, from trusted international partners.” The SCRI operates by financing long-term offtake contracts signed by U.S. firms with foreign producers of critical minerals—provided such minerals are being utilized for products manufactured in the U.S.

The Order directs EXIM to, within 30 days of the date of the order, release recommended program guidance for the use of the new SCRI tools “to secure United States offtake of global raw mineral feedstock for domestic minerals processing, as well as under the Make More in America Initiative to support domestic mineral production.”

“Domestic” Minerals?

Apart from the EXIM offtake initiative, the Order emphasizes it is focused on *domestic* production. However, several additional nuances bear mention:

First, Canada has been considered a “domestic” source for DPA Title III purposes since 1992. As a recent example, the DoD awarded \$20 million in DPA funding to a Canadian company for establishing production of cobalt sulfate. Following the recent trilateral AUKUS agreement, the 2024 National Defense Authorization Act further expanded the definition of “domestic” to encompass Australian and British resources as well. Critical resource capabilities in these countries may thus be eligible for both domestic assistance and for EXIM offtake arrangements. Both Canada and Australia are significant producers of uranium.

There are further hints of foreign eligibility. Although the Order limits the Title III loan power delegated to the DFC “to loans that create, maintain, protect, expand, or restore domestic mineral production,” this domestic limitation does not mention either loan guarantees or purchasing powers,

and goes on to discuss the DFC’s use of “Loans, loan guarantees, and political risk insurance extended using the authority delegated....” The political risk insurance does not seem to be aimed at U.S. entities for domestic operations, as the DFC currently offers “Coverage of up to \$1 billion against losses due to currency inconvertibility, government interference, and political violence including terrorism.” Finally, the Order refers to “Agencies that are empowered to make loans, loan guarantees, grants, equity investments, or to conclude offtake agreements to advance national security in securing vital mineral supply chains, both domestically *and abroad*....” (Emphasis added).

For additional information on the Executive Order and its impacts on private and public capital investment opportunities, read more [here](#).

¹ See [Exec. Order No. 14,156 “Declaring a National Energy Emergency,” 90 FR 8433 \(Jan. 29, 2025\)](#).

² 30 U.S.C. § 1606(a)(3) refers to a list maintained by the Secretary of the Interior. This list is required to be updated at least every three years. The current list dates to 2022, and thus is due for an update: <https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals>.